



SO ORDERED.

SIGNED January 23, 2006.

A handwritten signature in cursive script, reading "Gerald H. Schiff", is written over a horizontal line.

**GERALD H. SCHIFF
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA**

IN RE:

**CHAD COUTEE
SAMANTHA COUTEE**

CASE NO. 03-52145

Debtors

CHAPTER 13

MEMORANDUM RULING

Chad and Samantha Coutee ("Debtors") filed a voluntary petition for relief under chapter 13 on September 16, 2003. Keith A. Rodriguez ("Trustee") is the standing chapter 13 trustee. This case has been marred by the Debtors' continuing dispute with their home mortgage creditor, Union Planters Bank. The Debtors believe that Union Planters has repeatedly failed to properly credit their payments. The Debtors decided during the case to terminate their ongoing disputes by refinancing their home mortgage with a different creditor. The dispute then became the amount due to

Union Planters to satisfy their claim. That is the essence of the dispute as it presently exists.

BACKGROUND

The Debtors' confirmed chapter 13 plan proposed to pay Union Planters its regular payments in the amount of \$843.52 per month "outside the plan," i.e., direct to Union Planters, bypassing the Trustee. This plan treatment is not uncommon.

Union Planters filed a proof of claim in this matter asserting a secured claim in the amount of \$123,190.53, an amount substantially different from that set forth in the Debtors' schedules. The Debtors objected to the Union Planters' claim, primarily on the basis that proper credit was not given for all payments made on the mortgage note.

On April 21, 2004, the court held a hearing on confirmation and the objection to the Union Planters' claim. Union Planters, though properly notified of the hearing, did not appear.

The Debtors' accountant, Cynthia Guidry, testified that she had calculated the sum due on the mortgage note based upon the receipts presented by the Debtors. The Debtors were directed to submit the worksheet of Ms. Guidry regarding her calculations and the Objection to Claim was sustained, finding that the Debtors were current on their mortgage obligation and that the sum due Union Planters was \$101,767.16 as of April 2004.

Union Planters filed a request for reconsideration, which was denied. The Debtors apparently continued to have difficulties in dealing with Union Planters and, on July 14, 2004, filed an Application to Incur Secured Debt seeking authority to refinance their home mortgage with a different lender. The Application was approved without objection on August 23, 2004. On November 4, 2004, the Debtors filed an Amended Application seeking a finding that the debt owed to Union Planters was \$101,902.77. No objection was filed and the court approved the Debtors' request on December 1, 2004.

Union Planters again filed a Motion to Reconsider on the basis that the debt was more than the amount set by the court. Following a hearing on January 26, 2005, the court entered an order granting the motion to reconsider and refixing the hearing on the Debtors' Amended Application.

The court held an evidentiary hearing on February 14, 2005 and held the record open to allow the Debtors to produce evidence of certain specified payments, including military allotments and cancelled checks. The parties filed a Joint Post-Trial Memorandum on May 12, 2005 indicating that certain issues had been resolved and setting forth the remaining disputes between the parties. The court refixed the matter for hearing on August 24, 2005. After hearing argument from counsel, the matter was taken under

advisement.

JURISDICTION

The case has been referred to this court by the Standing Order of Reference entered in this district which is set forth as Rule 83.4.1 of the Local Rules of the United States District Court for the Western District of Louisiana. No party in interest has requested a withdrawal of the reference. The court finds that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

These Reasons for Decision constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, Federal Rules of Bankruptcy Procedure.

LAW AND ANALYSIS

Following the resolution of disputes regarding certain payments, the parties agree that the payoff of the mortgage is \$132,144.40 through April 30, 2005, plus interest at the rate of 7.375 per cent per annum from May 1, 2005, until paid.

The parties agree that the two remaining issues are (1) the effect on the accrual of interest of the Debtors tender of a check in the amount of \$102,420.78 on November 24, 2004; and (2) the reasonableness of fees and costs asserted by Union Planters in the amount of \$5,656.45.

Tender of Check

On November 24, 2004, the Debtors tendered a check in the

amount of \$102,420.78 in full payment of the mortgage owed to Union Planters. Union Planters refused to accept the check, which ultimately was deposited with the Clerk of the Bankruptcy Court on February 14, 2005. The Debtors assert that the interest on the mortgage should have ceased when the check was tendered and/or deposited.

Article 1869 of the Louisiana Civil Code provides in relevant part:

When the object of the performance is the delivery of . . . a sum of money and the obligee [Union Planters] fails to accept the performance tendered by the obligor [Debtors], the tender, produces all the effects of a performance from the time was tender if declared valid by the court. . . .

Further, Revision Comment (c) to article 1869 advises that:

(c) . . . if the court declares the performance valid, the liberative effects of performance take place from that time the tender was made: *Inter alia*, from that time interest ceases to accrue (see *Frey v. Fitzpatrick-Cromwell Co.*, 108 La. 125, 32 437 (1902)

As the parties now agree that the check tendered was not sufficient to satisfy the obligation to Union Planters, by operation of Article 1869, a tender was not effected by the delivery of the check. Accordingly, the deposit of the check into the registry of the court did not toll the accrual of interest on the debt.

Fees and Costs

Shapiro & Mentz, LLP, counsel for Union Planters, has

submitted a Breakdown of their fees and costs. The \$5,656.45 is broken down as follows:

Attorney fees for filing executory process	\$ 637.50
Attorney fees for filing proof of claim	\$ 800.00
Civil litigation attorney fees	\$1,500.00
Accountant trial appearance	\$1,117.00
Title work	\$ 450.00
Curative title work	\$ 187.50
Certified copies	\$ 47.50
Bankruptcy court copies	\$ 12.00
Clerk of court's costs	\$ 462.95
Sheriff's Costs	\$ 442.00

This court has recently held that fees for paying an attorney to file a proof of claim is not recoverable by a secured creditor. Accordingly, those fees of \$800 will not be allowed.

It appears that the charges for "civil litigation attorney fees" and the "accountant trial appearance" were the expenses incurred during the litigation in the current case. The court has not been provided with a statement setting forth how these fees were calculated. However, the court is familiar with the contentiousness of the present dispute and can find no basis to dispute the fees charged.

Accordingly, the court will allow all fees and costs asserted with the exception of \$800.

Within 20 days, Union Planters shall submit, approved as to form by counsel for Debtors, a proposed order setting forth the exact amount due to Union Planters under the mortgage.

IT IS SO ORDERED.

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